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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,515

03/21/2007

Michael F O'Rourke

000877/0002

1448

26610 7590 09/22/2008
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EXAMINER

MALLARI, PATRICIA C

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

09/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,515	Applicant(s) O'ROURKE, MICHAEL F	
	Examiner PATRICIA C. MALLARI	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/21/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 3/21/07 has been considered.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the apparatus as claimed in claims 5 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-4 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A statutory process must be tied to another statutory class or transform underlying subject matter into a different state or thing. The method of claims 1-4 fails to be tied (i.e. positively recite) another statutory class (such as a particular apparatus) or physically transform underlying subject matter, and therefore fails to constitute a statutory process. This rejection may be overcome, for example, by positively reciting ``on line 5 of claim 1 the device used to measure the radial pressure waveform.

Claims 7 and 8 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 7 and 8 claim "a software product", wherein software is a generic term referring to a computer program. Data structures or computer programs not claimed as embodied in computer-readable media are descriptive material *per se* and are not statutory because they are not capable of causing functional change in the computer (see MPEP 2106.01).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 6 claim an apparatus, but neither claim sets forth any structure of the apparatus. Therefore, it is impossible to determine the scope of the claimed invention, thereby rendering the claim indefinite.

Allowable Subject Matter

Due to the multiple rejections under 35 U.S.C. 101, and 35 U.S.C. 112, 2nd paragraph, no statement of allowance is being given at this time, although no prior art rejection has been made. Upon resolution of these issues, the prior art will be revisited. However, the prior art fails to teach determining central systolic pressure by determining the corresponding pressure at time t after the wave foot of a radial pressure waveform, wherein time t is the time from pressure wave foot to peak in a central carotid artery. The prior art also fails to teach determining the central systolic pressure by taking the value of the radial pressure waveform at the time of the start of a component of the waveform attributable to the lower body reflection. US Patent No. 5,265,011 to O'Rourke and US Patent Application Publication No. 2002/0177781 to Amano represent the most relevant prior art.

US Patent No. 5,265,011 to O'Rourke teaches a method wherein the value of a pressure waveform at the time of the start of a component of the waveform attributable to the lower body reflection is determined (see entire document, especially fig. 17; col. 10, lines 35-44 of O'Rourke). O'Rourke lacks determining such a value as the central systolic pressure.

US Patent Application Publication No. 2002/0177781 to Amano teaches determining a central (aortic) systolic pressure wherein a radial pressure waveform is measured (see entire document, especially paragraph 162 of Amano) and determining the central blood pressure waveform using a stored transfer function (see entire document, especially paragraphs 126, 127 of Amano). Amano lacks determining the central systolic pressure either as the corresponding pressure at time t after the wave foot of a radial pressure waveform, wherein time t is the time from pressure wave foot to peak in a central carotid artery or by taking the value of the radial pressure waveform at the time of the start of a component of the waveform attributable to the lower body reflection. Furthermore, it would not have been obvious to combine the method of Amano with that of O'Rourke.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA C. MALLARI whose telephone number is (571)272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/
Examiner, Art Unit 3735